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10/750,352

12/31/2003

J. Andre Bowman

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EXAMINER

JONES, SCOTT E

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

06/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/750,352

Applicant(s)

BOWMAN ET-AL.

Examiner

Scott E. Jones

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>5/28/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 5/28/04 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because each entry lacks a publication date as required. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-23 are rejected under 35 U.S.C. 102(b) as being anticipated by the background of the invention.

Regarding claims 1-8, the background of the invention discloses the lottery game, known as lotto, where a player selects a number or numbers from single or multiple pools of numbers was introduced by New York and Massachusetts in 1978. This lotto involved players selecting six numbers from 1 to 30 from a single pool of numbers. While the background of the invention does not explicitly disclose cards, the description is broad (numbers selected from single or

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multiple pools), thus the pools of numbers may be selected from any type of pool (cards and/or balls) (Page 1, lines 23-25).

Regarding claims 9-23, the background of the invention discloses, in 1996, Georgia, Illinois, Massachusetts, Maryland, Michigan and Virginia combined to start a lotto game known as "The Big Game." "The Big Game" added New Jersey in 1999, New York, Ohio, Washington in 2002 and Texas in 2003.

The "Big Game" changed its name to Mega Millions in 2002. Mega Millions is played as players pick six numbers from two separate pools. Five different numbers, from 1 to 52, are selected from the first pool, while one additional number, from 1 to 52, known as the "Mega Ball" is selected from the second pool. A jackpot is won by matching all six numbers, the first five in any order, plus the "Mega Ball". Jackpots start at \$10 Million and increase with each drawing should there not be a Jackpot Winner. In 2000, a \$363 Million Jackpot was won from this game.

In 1988, the Multi-State Lottery Association (MUSL) began with Oregon, Iowa, Kansas, Rhode Island, West Virginia as members. Presently, the MUSL includes twenty-six member states (including the District of Columbia), and operates various lotto games, including the Powerball lotto game.

The Powerball lotto game is played as players pick six numbers from two separate pools. Five different numbers, from 1 to 53, are selected from the first pool of white balls, while one additional number, from 1 to 42, known as the Powerball number carrying object, is selected from the second pool of red balls. A jackpot is won by matching all six numbers, the first five in

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any order, plus the Powerball number. Jackpots increase should there not be a previous jackpot winner. In 1998, Powerball paid a then world record Jackpot of \$295.7 million.

Lotto type lottery games are also played in Florida and New York. In Florida, six different numbers, from 1 to 53, are selected by a player. In New York, players select six different numbers, from 1 to 59. Both the Florida and New York Lottos can be played online.

Players typically pick their numbers for these lotto type lottery games with many strategies.

Most strategies are random. For example, players use the numbers of theirs or a loved ones birthday, their address, important dates, favorite athletes, or favorite numbers.

Players can also select the numbers from dice. Additionally, there are many computer programs that will pick random numbers, these programs typically known as "Quick Picks." These "Quick Pick" programs are even offered at the retail outlets where the lotto game tickets are purchased.

Additionally, there is an "8-Ball" device, that when shaken will show a visible number (Pages 1 and 2). While the background of the invention does not explicitly disclose cards, the description is broad (numbers selected from single or multiple pools), thus the pools of numbers may be selected from any type of pool (cards and/or balls).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the background of the invention.

The background of the invention discloses that as discussed above.

The background of the invention discloses the claimed invention. However, alternatively, assuming the background of the invention does not disclose expressly that cards are used in the present invention.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use a deck of cards to implement a lotto type lottery game. One of ordinary skill in the art, furthermore, would have expected the lotto games described in the background of the invention, and applicant's invention, to perform equally well with either the pools of number selected from balls or the claimed cards because both selecting numbers from pools of balls or cards would perform the same function of selecting numbers for various embodiments of lotto type lottery games.

Therefore, it would have been prima facie obvious to modify the background of the invention to obtain the invention as specified in claims 1-23 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of the background of the invention.

Furthermore, the prior art is replete with lottery games wherein lottery numbers in a lottery game are selected from a deck of cards.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Caramazza U.S. 4,462,597, Fakhoury U.S. 4,591,162, Zebrowski U.S. 4,669,732, Levine U.S. 4,741,540, Chao U.S. 4,795,161, Fraser U.S. 5,718,432, Hoyt et al. U.S. 6,547,247,

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and Stewart U.S. Pub. No. 20030178770 A1 disclose using cards or decks of cards to implement lottery type games.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott E. Jones whose telephone number is (571) 272-4438. The examiner can normally be reached on Monday - Friday, 8:30 A.M. - 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott E. Jones/
Primary Examiner
Art Unit 3714

SEJ